

HB 1287 - H AMD 401

By Representative Anderson

NOT CONSIDERED 04/22/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** Under federal law, Indian nations are
4 federally dependent domestic sovereigns that are distinct, independent
5 political entities legally separate from the state and owing no
6 allegiance to the state. Indian nations are uniquely empowered to
7 generate income for their communities through taxing and other revenue
8 mechanisms, such as operating casinos, that are not available to
9 constitutionally authorized political subdivisions of the state.
10 Indian nations do not pay property tax on land held in trust by the
11 federal government nor on nonreservation land used for essential
12 government services. Tribally owned businesses are not subject to
13 sales and excise taxes on transactions conducted by tribal members on
14 tribal land. The state of Washington, through the Centennial Accord,
15 has agreed to treat Indian nations on a sovereign-to-sovereign basis.

16 The legislature finds that many statutory provisions treat Indian
17 nations not as independent sovereigns but as state-dependent entities,
18 which they are not, creating a clear conflict in the application of
19 state laws. Tribal nations have numerous independent sources of
20 revenue. In 2010, the tribes generated nearly one billion seven
21 hundred fifty million dollars in net gambling receipts. The Washington
22 state office of financial management estimated that less than two
23 percent of the state's population is Native American.

24 In this time when the state faces significant continuing budget
25 deficits and must make funding reductions to service programs it is
26 providing to all its citizens, the legislature has made policy changes
27 in many areas to require those that have independent sources of

1 revenue to pay for the state services they use. The legislature
2 intends to clarify the sovereign legal standing of Indian nations with
3 respect to the state of Washington and the eligibility of Indian
4 nations to apply for and receive state-provided program resources
5 contingent upon sovereign-to-sovereign revenue sharing agreements to
6 help defray the cost of such program services.

7

8 NEW SECTION. **Sec. 2.** (1) To be eligible to apply for and receive
9 money from programs identified in section 3 of this act, a tribal
10 government of a federally recognized Indian tribe located within the
11 state must have a sovereign-to-sovereign agreement with the state that
12 provides for the state to receive remuneration from the Indian nation
13 for the privileges provided by these state programs and services in an
14 amount sufficient so that the state receives a benefit for extending
15 the privilege of state programs and services to federally recognized
16 Indian nations.

17 (2) The requirements and conditions of this section apply unless
18 the application of a requirement or condition is prohibited by federal
19 law.

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21 NEW SECTION. **Sec. 3.** (1) State-funded programs subject to the
22 conditions of section 2 of this act include but are not limited to:

23 (a) Public facilities loans and grants from the community economic
24 development board;

25 (b) The local infrastructure financing tool program;

26 (c) Bond funding from the state and local improvement revolving
27 account for:

28 (i) Waste disposal facilities;

29 (ii) Water supply facilities;

30 (iii) Recreation areas and facilities; and

31 (iv) Health and social service facilities;

32 (d) Department of agriculture programs for:

33 (i) Funding and technical assistance under the department's pest
34 program;

1 (ii) Surface water monitoring; and
2 (iii) Food safety;
3 (e) The building communities fund program;
4 (f) The tourism competitive grant program;
5 (g) Grant programs under the recreation and conservation office;
6 (h) Lake Roosevelt Columbia partnership agreements;
7 (i) Toxic clean-up programs under the department of ecology;
8 (j) The centennial clean water program;
9 (k) Public health emergency preparedness and response under the
10 department of health;
11 (l) State-funded grant programs under the emergency management
12 division of the military department;
13 (m) The competitive grant program for economic development
14 activity designed to further regional cluster growth administered by
15 the department of commerce;
16 (n) Grants and loans through the department of transportation for
17 planning, acquisition, construction, improvement, and maintenance or
18 operation of an airport;
19 (o) Funds received from counties using the county road
20 administration board ferry capital improvement program;
21 (p) State maintenance funds to eligible tribes under the temporary
22 assistance to needy families program;
23 (q) Housing-based supportive services for homeless families;
24 (r) Funds available through housing assistance programs and the
25 Washington housing trust fund;
26 (s) Affordable housing programs; and
27 (t) Funds from the home visiting services account.
28 (2) State agencies may require compliance with section 2 of this
29 act for Indian nations seeking access to state-funded programs not
30 listed in subsection (1) of this section that come into existence
31 after the effective date of this section unless prohibited by statute.
32 (3) Nothing in this chapter prevents tribal citizens as
33 individuals from applying for and receiving state services that they
34 are eligible to receive under the law.

1 NEW SECTION. **Sec. 4.** (1) The governor may enter an agreement
2 with a tribe to receive payment for the privilege of participating in
3 state programs under section 2 of this act subject to the conditions
4 of this section.

5 (2) The agreement with each tribe must be for an amount sufficient
6 to provide the state with a benefit for extending the privilege of
7 state programs and services to federally recognized Indian nations.
8 The agreement must specify that payments are made to the state
9 treasurer on a quarterly basis.

10 (3) A sovereign-to-sovereign agreement entered into pursuant to
11 this chapter must include:

12 (a) Mechanisms to allow the state auditor and state agencies to
13 conduct audits of recipients of state services in the same manner as
14 they would for local governments or other program participants; and

15 (b) A provision that agreements are public records and must be
16 disclosed upon request and posted on an appropriate state web site.

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18 NEW SECTION. **Sec. 5.** The Indian nation eligibility for state
19 services account is created in the state treasury. All receipts from
20 the agreements in section 4 of this act must be deposited into the
21 account. The state treasurer must track amounts received from
22 individual tribes and report amounts received quarterly to the
23 department of revenue. The state treasurer must transfer on July 1st
24 of each year the entire fund balance of the account into the general
25 fund.

26

27 NEW SECTION. **Sec. 6.** The state consents to the jurisdiction of
28 the federal courts in actions brought by a tribe seeking enforcement
29 of an agreement under section 4 of this act, conditioned upon the
30 tribe providing similar consent in the agreement and waiver of claims
31 of sovereign immunity that would prevent enforcement of any provisions
32 of this chapter. This limited waiver of sovereign immunity shall not
33 extend to actions other than those expressly set forth in this chapter
34 and the agreement.

1 **Sec. 7.** RCW 82.36.450 and 2007 c 515 s 19 are each amended to
2 read as follows:

3 (1) The governor may enter into an agreement with any federally
4 recognized Indian tribe located on a reservation within this state
5 regarding motor vehicle fuel taxes included in the price of fuel
6 delivered to a retail station wholly owned and operated by a tribe,
7 tribal enterprise, or tribal member licensed by the tribe to operate a
8 retail station located on reservation or trust property. The
9 agreement may provide mutually agreeable means to address any tribal
10 immunities or any preemption of the state motor vehicle fuel tax.

11 (2) The provisions of this section do not repeal existing
12 state/tribal fuel tax agreements or consent decrees in existence on
13 May 15, 2007. The state and the tribe may agree to substitute an
14 agreement negotiated under this section for an existing agreement or
15 consent decree, or to enter into an agreement using a methodology
16 similar to the state/tribal fuel tax agreements in effect on May 15,
17 2007.

18 (3) If a new agreement is negotiated, the agreement must:

19 (a) Require that the tribe or the tribal retailer acquire all
20 motor vehicle fuel only from persons or companies operating lawfully
21 in accordance with this chapter as a motor vehicle fuel distributor,
22 supplier, importer, or blender, or from a tribal distributor,
23 supplier, importer, or blender lawfully doing business according to
24 all applicable laws;

25 (b) Provide that the tribe will expend fuel tax proceeds or
26 equivalent amounts on: Planning, construction, and maintenance of
27 roads, bridges, and boat ramps; transit services and facilities;
28 transportation planning; police services; and other highway-related
29 purposes;

30 (c) Include provisions for annual audits (~~(or other means of~~
31 ~~ensuring compliance)~~) to certify the number of gallons of motor
32 vehicle fuel purchased by the tribe for resale at tribal retail
33 stations, and the use of fuel tax proceeds or their equivalent for the
34 purposes identified in (b) of this subsection. (~~Compliance reports~~)

1 Audits must be delivered to the director of the department of
2 licensing. The director of the department of licensing must certify
3 the audits required in this subsection and submit them to the
4 transportation committees of the legislature by January 1st of each
5 calendar year. Following receipt of the audits, the transportation
6 committees of the legislature must jointly hold a public hearing to
7 consider the audits and any related issues with agreements entered
8 into under this section.

9 ~~(4) ((Information from the tribe or tribal retailers received by~~
10 ~~the state or open to state review under the terms of an agreement~~
11 ~~shall be deemed to be personal information under RCW 42.56.230(3)(b)~~
12 ~~and exempt from public inspection and copying.~~

13 ~~—(5))~~ The governor may delegate the power to negotiate fuel tax
14 agreements to the department of licensing.

15 ~~((+6))~~ (5) The department of licensing shall prepare and submit
16 an annual report to the legislature on the status of existing
17 agreements and any ongoing negotiations with tribes.

18
19 **Sec. 8.** RCW 82.38.310 and 2007 c 515 s 31 are each amended to
20 read as follows:

21 (1) The governor may enter into an agreement with any federally
22 recognized Indian tribe located on a reservation within this state
23 regarding special fuel taxes included in the price of fuel delivered
24 to a retail station wholly owned and operated by a tribe, tribal
25 enterprise, or tribal member licensed by the tribe to operate a retail
26 station located on reservation or trust property. The agreement may
27 provide mutually agreeable means to address any tribal immunities or
28 any preemption of the state special fuel tax.

29 (2) The provisions of this section do not repeal existing
30 state/tribal fuel tax agreements or consent decrees in existence on
31 May 15, 2007. The state and the tribe may agree to substitute an
32 agreement negotiated under this section for an existing agreement or
33 consent decree, or to enter into an agreement using a methodology

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1 similar to the state/tribal fuel tax agreements in effect on May 15,
2 2007.

3 (3) If a new agreement is negotiated, the agreement must:

4 (a) Require that the tribe or the tribal retailer acquire all
5 special fuel only from persons or companies operating lawfully in
6 accordance with this chapter as a special fuel distributor, supplier,
7 importer, or blender, or from a tribal distributor, supplier,
8 importer, or blender lawfully doing business according to all
9 applicable laws;

10 (b) Provide that the tribe will expend fuel tax proceeds or
11 equivalent amounts on: Planning, construction, and maintenance of
12 roads, bridges, and boat ramps; transit services and facilities;
13 transportation planning; police services; and other highway-related
14 purposes;

15 (c) Include provisions for annual audits (~~(or other means of~~
16 ~~ensuring compliance)~~) to certify the number of gallons of special fuel
17 purchased by the tribe for resale at tribal retail stations, and the
18 use of fuel tax proceeds or their equivalent for the purposes
19 identified in (b) of this subsection. (~~Compliance reports~~) Audits
20 must be delivered to the director of the department of licensing. The
21 director of the department of licensing must certify the audits
22 required in this subsection and submit them to the transportation
23 committees of the legislature by January 1st of each calendar year.
24 Following receipt of the audits, the transportation committees of the
25 legislature must jointly hold a public hearing to consider the audits
26 and any related issues with agreements entered into under this
27 section.

28 (~~(Information from the tribe or tribal retailers received by~~
29 ~~the state or open to state review under the terms of an agreement~~
30 ~~shall be deemed personal information under RCW 42.56.230(3)(b) and~~
31 ~~exempt from public inspection and copying.~~

32 ~~—(5))~~ The governor may delegate the power to negotiate fuel tax
33 agreements to the department of licensing.

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1 (b) "Essential government services" means services such as tribal
2 administration, public facilities, fire, police, public health,
3 education, sewer, water, environmental and land use, transportation,
4 and utility services.

5 (3) The exemption for a federally recognized Indian tribe located in
6 the state is only allowed for those tribes with a valid sovereign-to-
7 sovereign remuneration agreement under chapter 43.--- RCW (the new
8 chapter created in section 11 of this act).

9
10 **Sec. 10.** RCW 82.29A.130 and 2008 c 194 s 1 and 2008 c 84 s 2 are
11 each reenacted and amended to read as follows:

12 The following leasehold interests shall be exempt from taxes
13 imposed pursuant to RCW 82.29A.030 and 82.29A.040:

14 (1) All leasehold interests constituting a part of the operating
15 properties of any public utility which is assessed and taxed as a
16 public utility pursuant to chapter 84.12 RCW.

17 (2) All leasehold interests in facilities owned or used by a
18 school, college or university which leasehold provides housing for
19 students and which is otherwise exempt from taxation under provisions
20 of RCW 84.36.010 and 84.36.050.

21 (3) All leasehold interests of subsidized housing where the fee
22 ownership of such property is vested in the government of the United
23 States, or the state of Washington or any political subdivision
24 thereof but only if income qualification exists for such housing.

25 (4) All leasehold interests used for fair purposes of a nonprofit
26 fair association that sponsors or conducts a fair or fairs which
27 receive support from revenues collected pursuant to RCW 67.16.100 and
28 allocated by the director of the department of agriculture where the
29 fee ownership of such property is vested in the government of the
30 United States, the state of Washington or any of its political
31 subdivisions: PROVIDED, That this exemption shall not apply to the
32 leasehold interest of any sublessee of such nonprofit fair association
33 if such leasehold interest would be taxable if it were the primary
34 lease.

1 (5) All leasehold interests in any property of any public entity
2 used as a residence by an employee of that public entity who is
3 required as a condition of employment to live in the publicly owned
4 property.

5 (6) All leasehold interests held by enrolled Indians of lands
6 owned or held by any Indian or Indian tribe where the fee ownership of
7 such property is vested in or held in trust by the United States and
8 which are not subleased to other than to a lessee which would qualify
9 pursuant to this chapter, RCW 84.36.451 and 84.40.175.

10 (7) All leasehold interests in any real property of any Indian or
11 Indian tribe, band, or community that is held in trust by the United
12 States or is subject to a restriction against alienation imposed by
13 the United States: PROVIDED, That this exemption shall apply only
14 where it is determined that contract rent paid is greater than or
15 equal to ninety percent of fair market rental, to be determined by the
16 department of revenue using the same criteria used to establish
17 taxable rent in RCW 82.29A.020(2)(b). The exemption for a federally
18 recognized Indian tribe located in the state is only allowed for those
19 tribes with a valid sovereign-to-sovereign remuneration agreement
20 under chapter 43.--- RCW (the new chapter created in section 11 of
21 this act).

22 (8) All leasehold interests for which annual taxable rent is less
23 than two hundred fifty dollars per year. For purposes of this
24 subsection leasehold interests held by the same lessee in contiguous
25 properties owned by the same lessor shall be deemed a single leasehold
26 interest.

27 (9) All leasehold interests which give use or possession of the
28 leased property for a continuous period of less than thirty days:
29 PROVIDED, That for purposes of this subsection, successive leases or
30 lease renewals giving substantially continuous use of possession of
31 the same property to the same lessee shall be deemed a single
32 leasehold interest: PROVIDED FURTHER, That no leasehold interest
33 shall be deemed to give use or possession for a period of less than
34 thirty days solely by virtue of the reservation by the public lessor

1 of the right to use the property or to allow third parties to use the
2 property on an occasional, temporary basis.

3 (10) All leasehold interests under month-to-month leases in
4 residential units rented for residential purposes of the lessee
5 pending destruction or removal for the purpose of constructing a
6 public highway or building.

7 (11) All leasehold interests in any publicly owned real or
8 personal property to the extent such leasehold interests arises solely
9 by virtue of a contract for public improvements or work executed under
10 the public works statutes of this state or of the United States
11 between the public owner of the property and a contractor.

12 (12) All leasehold interests that give use or possession of state
13 adult correctional facilities for the purposes of operating
14 correctional industries under RCW 72.09.100.

15 (13) All leasehold interests used to provide organized and
16 supervised recreational activities for persons with disabilities of
17 all ages in a camp facility and for public recreational purposes by a
18 nonprofit organization, association, or corporation that would be
19 exempt from property tax under RCW 84.36.030(1) if it owned the
20 property. If the publicly owned property is used for any taxable
21 purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and
22 82.29A.040 shall be imposed and shall be apportioned accordingly.

23 (14) All leasehold interests in the public or entertainment areas
24 of a baseball stadium with natural turf and a retractable roof or
25 canopy that is in a county with a population of over one million, that
26 has a seating capacity of over forty thousand, and that is constructed
27 on or after January 1, 1995. "Public or entertainment areas" include
28 ticket sales areas, ramps and stairs, lobbies and concourses, parking
29 areas, concession areas, restaurants, hospitality and stadium club
30 areas, kitchens or other work areas primarily servicing other public
31 or entertainment areas, public rest room areas, press and media areas,
32 control booths, broadcast and production areas, retail sales areas,
33 museum and exhibit areas, scoreboards or other public displays,
34 storage areas, loading, staging, and servicing areas, seating areas

1 and suites, the playing field, and any other areas to which the public
2 has access or which are used for the production of the entertainment
3 event or other public usage, and any other personal property used for
4 these purposes. "Public or entertainment areas" does not include
5 locker rooms or private offices exclusively used by the lessee.

6 (15) All leasehold interests in the public or entertainment areas
7 of a stadium and exhibition center, as defined in RCW 36.102.010, that
8 is constructed on or after January 1, 1998. For the purposes of this
9 subsection, "public or entertainment areas" has the same meaning as in
10 subsection (14) of this section, and includes exhibition areas.

11 (16) All leasehold interests in public facilities districts, as
12 provided in chapter 36.100 or 35.57 RCW.

13 (17) All leasehold interests in property that is: (a) Owned by
14 the United States government or a municipal corporation; (b) listed on
15 any federal or state register of historical sites; and (c) wholly
16 contained within a designated national historic reserve under 16
17 U.S.C. Sec. 461.

18 (18) All leasehold interests in the public or entertainment areas
19 of an amphitheater if a private entity is responsible for one hundred
20 percent of the cost of constructing the amphitheater which is not
21 reimbursed by the public owner, both the public owner and the private
22 lessee sponsor events at the facility on a regular basis, the lessee
23 is responsible under the lease or agreement to operate and maintain
24 the facility, and the amphitheater has a seating capacity of over
25 seventeen thousand reserved and general admission seats and is in a
26 county that had a population of over three hundred fifty thousand, but
27 less than four hundred twenty-five thousand when the amphitheater
28 first opened to the public.

29 For the purposes of this subsection, "public or entertainment
30 areas" include box offices or other ticket sales areas, entrance
31 gates, ramps and stairs, lobbies and concourses, parking areas,
32 concession areas, restaurants, hospitality areas, kitchens or other
33 work areas primarily servicing other public or entertainment areas,
34 public rest room areas, press and media areas, control booths,

1 broadcast and production areas, retail sales areas, museum and exhibit
2 areas, scoreboards or other public displays, storage areas, loading,
3 staging, and servicing areas, seating areas including lawn seating
4 areas and suites, stages, and any other areas to which the public has
5 access or which are used for the production of the entertainment event
6 or other public usage, and any other personal property used for these
7 purposes. "Public or entertainment areas" does not include office
8 areas used predominately by the lessee.

9 (19) All leasehold interests in real property used for the
10 placement of military housing meeting the requirements of RCW
11 84.36.665.

12
13 NEW SECTION. **Sec. 11.** Sections 1 through 6 of this act
14 constitute a new chapter in Title 43 RCW.

15
16 NEW SECTION. **Sec. 12.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20
21 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of the
23 state government and its existing public institutions, and takes
24 effect immediately."

25 Correct the title.
26

EFFECT: (1) Strikes all provisions of the original bill; (2)
requires an Indian tribe to have a sovereign-to-sovereign
agreement with the state requiring payment of remuneration to
the state in order to receive the benefit of specified state
programs and services; (3) requires that the remuneration be
in an amount that provides the state with sufficient benefit;
(4) authorizes the Governor to enter into an agreement with a
tribe to allow participation in specified state programs in
return for the tribe's payment of the requisite remuneration;
(5) creates the Indian Nation Eligibility for State Services

Account in the State Treasury for the receipt of payments made by tribes in return for the receipt of state services and participation in state programs; (6) requires the state and a tribe to mutually consent to the jurisdiction of the federal courts for enforcement of remuneration agreements and for a tribe to waive its sovereign immunity regarding such enforcement; (7) requires that new agreements between the state and a tribe regarding motor vehicle fuel taxes and special fuel taxes include provisions for annual audits to certify that the proceeds from fuel resale are used for appropriate purposes by the tribe; (8) requires that the transportation committees of the legislature jointly hold an annual public hearing to examine the fuel tax audits and any related issues; (9) makes the property tax exemption for tribal property used for essential government services contingent upon the tribe having a sovereign-to-sovereign remuneration agreement in place; (10) makes the tribal leasehold tax exemption contingent upon the tribe having a sovereign-to-sovereign remuneration agreement in place; and (11) adds an emergency clause.

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